

# **The Contentious Politics of Labour Rights as Human Rights: Lessons from the Implementation of Domestic Workers Rights in the Philippines<sup>1</sup>**

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## **Abstract**

The 189 Convention Concerning Decent Work for Domestic Workers is considered a key example of the ongoing process of convergence between labour rights and human rights. This article offers an empirically grounded assessment and a novel contentious politics perspective on its implementation in the Philippines. It argues that, while the convergence between human rights and labour rights was instrumental to the recognition of domestic workers rights, in the post-ratification phase, its sustainability over time is challenged by frictions in the way of framing issues and in the modus operandi, strategies and goals of different social coalitions.

**Key Words:** labour rights, human rights, domestic work, contentious politics, Philippines.

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## **1. Introduction**

In 2017, when I first started my research on domestic workers rights in the Philippines, one organization – the National Linkage Association of Domestic Workers in the Philippines (SUMAPI) – emerged from my readings as the key national player (Becker 2012; D’Souza, 2010; Johnstone 2012). It seemed therefore logic to start my empirical enquiry by making contact with this organization. Surprisingly, that proved much harder than expected. I could not find any website or Facebook profile of the organization with the sole exception of a Twitter account, which however had been inactive since 2013. Upon my arrival in the Philippines in March 2018, I soon realized that SUMAPI was long-time gone. A question remained though: how was it possible that an organization that counted over 8,000 members suddenly vanished right at the apex of the national debate on domestic workers rights and when major legal and policy reforms were being achieved? As I will show, the story of SUMAPI is in itself a compelling example of the main argument that I will develop in this article about the potentially unsustainable convergence between human rights and labour rights.

In 2011, the ratification of the first international norm on domestic work – the 189 Convention Concerning Decent Work for Domestic Workers – by the International Labour Organization (ILO) marked a landmark in the process of recognition of ‘domestic workers as workers’ and towards the improvement of the working conditions of 67 million domestic workers worldwide (ILO 2015). The Convention also represents a turning point for the international labour law regime. It is indeed the first time that a human rights approach is explicitly incorporated in labour norms through the

acknowledgement of the specific vulnerabilities to which the condition of domestic worker exposes individuals, and particularly women. This juxtaposition of labour rights and human rights marks a new turn in the debate on “labour rights as human rights” (Blackett 2012).

Since the early 2000s, scholars have been discussing both the overlaps and tensions between these two rights frameworks as well as the opportunity cost of conceptualizing labour rights as human rights. So far, however, the debate has mainly developed in the field of law and normative theory (Mantouvalou 2012; Kolben 2009; Hertel 2009), while empirical studies have tended to focus exclusively on processes and actors at the international level (Piper and Rother 2012; Boris and Fish 2014; Oelz 2014; Fish 2017). In contrast, the relationship between labour and human rights frameworks and movements at the national level has remained almost completely unexplored, with few exceptions (e.g. Mundlak 2012). Yet, domestic contexts can provide key insights on how tensions and convergences between human rights and labour rights are reflected in social, cultural and political processes.

This article aims at filling this gap by offering an empirically grounded analysis of how the strategies of social mobilization and public framing around domestic workers rights have unfolded in the Philippines. Through a process-tracing analysis of the ratification of Convention 189 and the subsequent legal and policy reforms, it shows how the convergence between human rights and labour rights movements and frames was indeed instrumental to the recognition of domestic workers rights in the Philippines. At the same time, it demonstrates how this convergence presents a number of fragilities and its sustainability over time is more uncertain than what theoretical approaches have been able to predict. In the post-ratification phase, tensions in the way of framing issues as well as in the *modus operandi*, strategies and goals of social

coalitions resurface, highlighting deeper tensions between human rights and labour rights that have been overlooked in the current debate.

The Philippines represents a particularly interesting case to study the implementation of domestic workers rights. Not only the country has a significant number of people employed as domestic workers (around 1.85 million according to the Philippine Statistics Authority PSA, 2017), the vast majority of whom are women (84.5%) and relatively young (one third are between 15 and 24 year old) (PSA 2010), but, in recent years, the Philippines has been a leading international actor for the recognition of domestic workers rights. In 2011, Filipino government's representatives chaired the ILO's Committee on Domestic Workers, which convened the discussions on Convention 189 in the run up towards its ratification. The Philippines was also the second country to ratify the Convention and still remains the only one in Asia. The role played by the Philippines in the international discussion on domestic workers' rights had a major impact on the national arena. The country is often mentioned as a 'good practice example' (Chavez and Piper 2015) for its institutional and legal framework on workers' rights, including domestic workers. In the words of an expert from the NGO Migrant Forum in Asia (MFA), the Philippines showcases "one of the most advanced experiences in Asia of implementation of domestic workers rights" (interview, Manila, March 2018). This article offers a more nuanced perspective on the Philippine case and counterbalances the overwhelming focus of the literature on Filipino migrant domestic workers. The migration angle, either in terms of conditions of vulnerability of migrant workers or of the economic impact of their remittances, is indeed dominant in the literature (Parreñas 2008; Rother 2009; Lindio-McGovern 2013). This article, in turn, sheds light on the underresearched world of domestic workers that remain within the national boundaries.

The results of this study draw from the empirical material collected during fieldwork in Manila in March and April 2018. Forty semi-structured interviews were conducted with a broad range of social and political stakeholders, including representatives of all the main social actors involved in the public debate on domestic workers rights (labour unions and NGOs), government agencies, employers' organizations, international organizations and NGOs. Interviews were also conducted with ILO personnel in Geneva and at the Bangkok regional office. Relevant legal documents, reports, statistical data and Congress proceedings provided useful information to map the state of the art, the process of reform and the public debate on this issue. Ethnographic observations were also conducted during public events and technical meetings.

Following a review of the relevant literature to map the state of the debate on the convergence between labour rights and human rights, section three summarizes the international process that led to the promulgation of domestic workers rights by the ILO as a key example of incorporation of human rights into international labour law. I then discuss the contentious politics surrounding the ratification of Convention 189 in the Philippines through a two-stage process: a phase of convergence that preceded the ratification and a phase of divergence that followed the ratification. I illustrate the sustainability challenges through an analysis of discursive frames and Networks of Labour Activism (NOLA) (Zajak et al. 2017). In the conclusions, I formulate broader theoretical contributions to the debate on labour rights as human rights.

## **2. Labour Rights as Human Rights?**

Are labour rights human rights? This question has been fuelling a debate among scholars and practitioners for the past two decades. Mantouvalou (2012) identifies three

main approaches that offer different answers. A ‘positivistic approach’ relies on the incorporation of given labour rights in human rights law to determine whether they should be considered human rights. From this perspective, labour rights can be treated as human rights in some jurisdictions and not in others, in certain time periods and not in others. A second approach, called ‘instrumental’, focuses on the strategies used by different actors, including state and international institutions, like courts, or civil society organisations to promote labour rights. When the reference to human rights is explicit and successful in granting recognition of labour rights, these rights can be legitimately considered human rights. The third approach adopts a normative perspective that considers the issue as a matter of moral truth. The aim is to assess whether labour rights have or not some key characteristics of human rights. This is the most recent and least taken approach in the literature and has generally led to the conclusion that labour rights should not be considered human rights.

These different approaches signal quite diverse positions on whether or not labour rights should be morally and legally treated as human rights. Yet, from a sociological/historical perspective, scholars are generally aligned in identifying a shift in the relationship between labour rights and human rights from a divergent towards a convergent path. In a seminal 1996 essay, Virginia Leary noted how, for most of the XX century, workers’ rights had been excluded from mainstream scholarship on human rights and how labour and human rights movements had been running “on tracks that are sometimes parallel and rarely meet” (Leary 1996: 22). While unions and labour organizations focused on the improvement of labour standards and workplace conditions, human rights organizations privileged political and civil rights issues (e.g. fight against torture, political imprisonment, defence of free speech).

Since the 1990s, however, labour and human rights “tracks have begun to meet much more often” (Kolben 2010: 450). The two frameworks have been converging in the way actors conceptualise them and mobilise, and in jurisprudence and norm-making. A human rights-based approach encouraged by the United Nations (UN) has started to permeate debates on international labour standards, while labour movements have been developing a new human rights discourse and consolidating alliances with other social actors (Piper and Rother 2012; Piper 2015). A growing repertoire of cases illustrates the convergence between human rights and labour rights. Within labour unionism, the International Trade Union Confederation (ITUC), founded in 2006, explicitly embraces a human rights discourse and conceives itself as part of the global human rights movement (Kolben 2010). Among mainstream NGOs, Human Rights Watch (HRW) has been publishing reports focused on labour issues since 2000. At the institutional level, there is a growing number of cases where regional human rights courts, and particularly the European Court of Human Rights, make reference to ILO instruments and jurisprudence on labour standards. As a result, the opportunities for litigating labour rights cases in human rights fora are multiplying (Erbert and Oelz 2012; Mantouvalou 2012). Within the ILO itself, the Declaration of Fundamental Principles and Rights at Work adopted in 1998 has been considered a landmark in the attempt to generate a list of universal labour standards integral to the human rights corpus. The Domestic Workers Convention has also been considered a key example of this new articulation. According to an ILO officer involved in the drafting of the norm, “the explicit reference to domestic workers’ human rights was inserted intentionally to ensure that the Convention would be considered by other human rights bodies” (interview, Geneva, March 2013).

If the empirical convergence of human rights and labour rights has been acknowledged by scholars adopting different theoretical and methodological approaches, its normative implications remain a controversial terrain. Positive assessments have highlighted the complementarity between human rights and labour rights and the value of an integrated approach that breaks down artificial divisions between human rights categories (Albin and Mantouvalou 2012). The narrow focus on either human or labour rights, these scholars argue, has led to the parcelization of the empirical analysis and theoretical implications. The convergence could be an opportunity to enhance the status of socio-economic rights within the broader human rights agenda and contribute to produce more precise assessments of challenges and violations (Mantouvalou 2012). Indeed, the universality of human rights law can counteract the marginal status of vulnerable workers (such as migrants and children) within several national jurisdictions and offer better protection standards (Mantouvalou 2013; Tasioulas 2012; Elias 2010).

These arguments around co-dependency and mutual strengthening of rights frameworks, however, are challenged by a growing body of literature that points towards some fundamental incompatibilities and risks embedded in the ongoing convergence. Kolben for example argues that not only the main prerogative on which human and labour rights are grounded is different (“In contrast to human rights, which are universal and possessed by all human beings by virtues of their humanity, labour rights can be defined as the set of rights that human beings possess by virtue of their status as workers”, 2010: 453), but also the way these rights are operationalized by social actors highlights important tensions between their collective vs individual orientations. These tensions, in turn, should caution against the widespread adoption of human rights discourse by the labour movement as it may eventually be detrimental for



the promotion of labour rights themselves. Among the causes of concern is the risk of individualising labour struggles, which could lead to “the end of the union movement as we know it” (Youngdahl 2009: 31). The legalist, elitist, individualist and philanthropic frames of the human rights movement are deemed incompatible with the sense of solidarity and community upon which the union movement was built (Kolmen 2010; Youngdahl 2009; Shirzad and Soltani 2015). Finally, the convergence can have depoliticizing effects on workers struggles, as the human rights discourse cannot accommodate some of the main issues at the core of labour rights, namely the centrality of class subordination, the labour–capital conflict and the impact of colonialism on national economies (Kumar 2015). In other words, the universality of human rights standards does not allow to address important variations linked to the fact that labour rights are time and place-bound (Shirzad and Soltani 2015).

### **3. From Labour Rights to Human Rights: Convention 189 as a Case of Convergence**

A breakthrough moment for the recognition of domestic workers rights was the inclusion of this issue in the agenda of the International Labour Conference, a process that started in the mid-2000s and culminated in 2011 with the adoption of Convention 189. Among the most important provisions of the Convention are: the obligation for states to ensure that domestic workers enjoy fair terms of employment, decent working conditions and social security provisions; the protection against all forms of abuse, harassment and violence; the establishment of a system of inspections and sanctions; and the guarantee to freedom of association and unionization (Albin and Mantouvalou 2012; Pla-Julián 2014).

The Convention makes explicit reference to human rights throughout the text: in the Preamble international human rights norms are mentioned such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR); Article 3(1) states that member states ‘shall take measures to ensure the effective promotion and protection of the human rights of all domestic workers, as set out in this Convention’; and Article 3(2) mentions the ILO ‘fundamental principles and rights at work’.

What lies behind this convergence between human rights and labour rights standards within Convention 189? This convergence can be partially explained in the framework of the ILO’s turn towards a human rights-based approach. But the prominence of human rights in the discussion on domestic workers rights is mainly rooted in the unique coalition of social actors that mobilized ‘from below’ to position the issue in the international agenda. This coalition was formed by actors not commonly represented within the traditional ILO constituencies (employers organizations, workers organizations and governments), namely domestic workers organizations and human rights NGOs. The concept of ‘Networks of Labour Activism’ (NOLA) (Zajak et al. 2017) is particularly apt to describe this coalition as it results from the interaction of different types of labour organizations, social movements and community organizations. Indeed, domestic workers unions are a peculiar kind of labour movements. Not only the sector is very difficult to organize, mainly due to the condition of isolation and multiple vulnerabilities of domestic workers, but even when some form of organization is achieved, it is often outside the umbrella of traditional unions. The rise of a transnational network of domestic workers organizations (International Domestic Workers’ Network, IDWN) since 2006 and its role in positioning the issue within the ILO agenda forced traditional unions to confront their limits of

representativeness in relation to this sector and to accept the presence of new actors at the negotiation table (Boris and Fish 2014; Blackett 2012; Johnstone 2012; Bonner und Spooner 2011).

In this process, domestic workers organizations found a key ally in the NGO sector, which offered them the opportunity to be present at ILO fora, albeit without voting or speaking rights (Boris and Fish 2014). One of the most important legacies of this alliance is the inclusion of human rights references in the final documents. At the same time, the very process that led to the approval of Convention 189 impacted the future of the international domestic workers movements while signalling important shifts in the composition of transnational civil society networks. The negotiations around Convention 189 represent a case in point of the rise of non-conventional actors (e.g. right-based NGOs) to fill the gaps left unattended by an international union movement weakened as a result of the expansion of the global neoliberal economy and still trapped in rigid corporatist governance structures. NGOs have the advantage of being more autonomous with respect to organized labour bargaining processes, which in turn has favoured the rise of new struggles for social justice of those groups that have been marginalized within traditional unions. On the negative side, however, the NGO sector is often the expression of an elite, rather than direct representation of social stakeholders, and it depends on highly volatile founding sources that tie its agenda to the ones of donor agencies (Grugel and Piper 2011; Piper 2005). As I will illustrate with the Philippines case, these tensions are not exclusive of the transnational movement, but they are often embedded in domestic processes as well.

#### **4. Implementing Domestic Workers Rights in The Philippines**

The public debate on domestic workers rights in the Philippines has stemmed from discussions and social activism around two longstanding issues: labour migration and child labour. These roots, perhaps more clearly than in most other countries, makes of this case a particularly interesting one to explore the convergence between human rights and labour rights. Indeed, both migrant and children rights are issues where the overlap between human rights and labour rights tend to be more explicitly acknowledged and least challenged than in other issue areas. Hence, tracing back the discussion to migrant and children rights is key to understand the process that led to the formation of the domestic workers' rights NOLA in the Philippines.

From the government side, both President Gloria Macapagal Arroyo and President Benigno Aquino III's administrations embraced international domestic workers' rights advocacy as an opportunity to increase the level of protection of Filipino migrant workers in the framework of state-driven labour migration programmes (King-Dejardin 2018). These workers are notoriously subject to systematic abuse and discrimination while abroad and are in turn celebrated as 'national heroes' upon their return. Taking a leading role in negotiating international standards to protect domestic workers was therefore a very popular and relatively costless move by a government that is constantly under scrutiny for not doing enough to protect its migrant citizens (interviews with former ILO regional officer and with civil servant at the Institute for Labor Studies ILS, Manila, March 2018).

From the civil society side, domestic workers rights had been featuring within the agendas of human rights NGOs since the mid-1990s, mainly as part of their fight against child labour. The NGO Visayan Forum Foundation (VFF) was the first one to engage with domestic workers' issues in the Philippines. Not only it was active in the rescue of exploited and abused children, but it also tried to address the legislative void

by drafting a pioneering Magna Carta for Domestic Workers or *Kasambahay Bill* (interviews with ILS civil servant and with VFF officer, Manila, March 2018). It would take more than fifteen years for the bill to be considered by policy-makers; in the meantime, VFF was very successful in attracting funding from international agencies, including the ILO and the United States Agency for International Development (USAID). Thanks to this support, VFF founded the first Filipino domestic workers organization – SUMAPI – in 1995. The strong leadership from the NGO sector, while quite effective in obtaining results, also meant that the unions “came rather late in the game” (interview with Scalabrini Migration Centre expert, Manila, March 2018), starting to engage only when it became clear that a window of opportunity was opening to steer the international agenda on domestic workers rights.

It was indeed in the late 2000s, in the framework of the preparatory works for the negotiation of Convention 189, that the human rights roots (migration and child labour) started to converge with a labour rights agenda for domestic workers. In 2009, a Technical Working Group (TWG) was established under the auspice of the ILO where all the main social and political stakeholders were represented, including major unions (Federation of Free Workers FFW, Trade Union Congress of the Philippines TUCP and the Alliance of Progressive Labor APL, which is now the Center of United and Progressive Workers SENTRO), government agencies (particularly the Department of Labour and Employment, DOLE), employers’ organizations (Employers Confederation of the Philippines, ECOP) and some NGOs (VFF, MFA and the Centre for Migrant Advocacy CMA). It was in the framework of the TWG that NGOs and unions eventually joined forces to push for the recognition of domestic workers’ rights in the Philippines. The government commitment was also crucial, as demonstrated by the key

role played by the Philippines on the chairmanship of the Committee on Decent Work for Domestic Workers within the ILC.

In this context, it is not surprising that the ratification of Convention 189 by the Philippines did not rise major opposition. The ratification was soon followed, on 18 January 2013, by the promulgation of the so-called *Batas Kasambahay* (Domestic Workers Law) (Republic Act 10361), drafted on the bases on the VFF Magna Carta. The law came to be internationally regarded as “a landmark piece of labour and social legislation that extends labour rights, benefits, and protection to [...] domestic workers in the Philippines” (ILO 2013). The law secures basic rights for domestic workers (e.g. be protected from abuse, violence, harassment; rights to privacy, education and communication); establishes the right to have a contract and sets minimum standards for wages, hours and days of rest; extends social security and public health insurance to the sector; and regulates the procedures of termination of employment and the role of private employment agencies.

In contrast to the relatively quick law-making process, the process of policy implementation is still showing, five years later, patchy and uncertain progress. The first priority was to develop policies and guidelines for implementation, including protocols for the rescue of abused domestic workers and a unified registration system across different social security agencies (interview with civil servant at the Institute for Labor Studies, cit.). The effective implementation of these mechanisms has been the main challenge so far. Indeed, a huge gap remains between the national policy level and the local level. The result is that only minor improvements have been made to increase awareness of both domestic workers and their employers about their new rights and duties. Even when stakeholders are informed, there is no mechanism (e.g. tax breaks) in place to incentivise a change of behaviour by the employers, while the

bureaucratic infrastructure required to allow domestic workers to access services is still not in place. In the Manila area there is no designated desk to register domestic workers or to put forward a complaint, with the situation unlikely to be any better in more remote provinces.

The lack of dedicated funding for local governments to take concrete action is one of the reasons behind the slow implementation (interview with FFW Secretariat member, cit.). Also crucial was the fact that advocacy and civil society engagement in the implementation process started to lose momentum soon after the promulgation of the Kasambahay Law. Under the latest ECOP chairmanship, the TWG is only sporadically meeting and the ILO has since withdrawn funding and personnel commitment (interviews with project manager at ECOP and with former ILO and VFF officer, Manila, March 2018). The back seat taken by social actors in the post-ratification phase reflects some of the challenges linked to the long-term sustainability of the process of convergence between human rights and labour rights in practice. The post-ratification scenario has indeed brought to the surface a number of tensions and contradictions both regarding the most effective way of framing domestic workers issues as well as the NOLA leadership.

## **5. From Human Rights to Labour Rights: The Challenges of a Sustainable Convergence**

The Philippines case provides interesting insights on the contentious politics around the convergence between human rights and labour rights. This convergence is clear in the way the debate on domestic workers rights was positioned as a public issue in the Philippines as well as in the NOLA that mobilized to push for legal and cultural changes. Yet, at the national level, the convergence was not so smooth as it is often

portrayed at the international level. Some of the contradictions and tensions noted by some of the more critical voices in the theoretical debate find in this case interesting empirical evidence. I will illustrate the challenges of reconciling these tensions and sustaining the convergence over time with respect to two main aspects: (1) how domestic workers rights have been framed in the national debate; and (2) how the relationship among different actors forming the domestic workers' rights NOLA has evolved over time.

### *5.1. Public Frames*

Flor Contemplacion was a domestic worker executed in Singapore for murder in 1995 after a highly controversial trial. Evidence against her were never conclusive and Filipino public opinion overwhelmingly believed that Contemplacion was innocent, blaming the Singaporean government for her death and the Philippine government for not doing enough to stop the execution. The case was a landmark in the rise of national awareness on the inhumane conditions that many Filipino domestic workers face abroad. The story is featured in two movies and a documentary and Contemplacion's name resonates among Filipino people as a modern national heroine. Other similar exemplary stories became well known to the Filipino press and public opinion in the following years, such as the one of Sarah Balabagan in the United Arab Emirates and, more recently, the murder of Joanna Demafelis in Kuwait. All these stories received extensive media coverage and were used by migrant and human rights organizations to claim for better protection and more guarantees for migrant domestic workers.

Although cases of serious abuse and injustices perpetrated against domestic workers in the Philippines are certainly not unheard (President Duterte himself publicly admitted to sexually assaulting a domestic worker when he was a teenager, Gutierrez



2018), I was surprised when I realized that my interviewees, including long-lasting social activities, were not able to mention any specific one. This contrast in the imaginary surrounding national and migrant domestic workers clearly exemplifies the differences in the way human rights organizations and labour unions shape their public discourse.

Human rights NGOs tend to rely on real life stories that are often reported in a (hyper)dramatized fashion and emphasise the iconic value of individual experiences. Since the Flor Contemplacion case, migrant rights organizations have been accumulating a lot of experience in public mobilization through the media reporting of iconic cases. This framing strategy has the key goal of mobilizing emotions and empathy for political purposes and is reflected in the very mission of some of these organizations. The migrant rights advocacy NGO Migrante International, for example, defines itself as a “victim-centred advocacy institution”. As one activist explains, this means relying on “our own data, experience and stories (...) to push the government to change their policies” (interview, Manila, March 2018). The focus here is not on the rights and the agency of domestic workers. It is rather through the lenses of abuse and suffering that these women are converted into icons. As another activist put it: “Migrants are always profiled as victims—heroes but also victims. They become heroes because they are victims” (interview with regional expert at MFA, cit.).

Similar strategies of iconic personalization of rights violations and reliance on stories of abuse have been commonly used to frame domestic workers’ issues in the context of child labour. A key example is VFF and the grounding of the organization’s national and international reputation on the powerful story of its founder, Cecilia Oebanda. A former child worker herself and political prisoner under Marcos dictatorship, after her release, she became an internationally famous activist fighting

human trafficking and children exploitation. Oebanda's story had all the key features to embody the emblematic transition from victim to heroine. It is therefore not surprising that VVF embraced full-on a human rights perspective. Interestingly, a clear recognition of boundaries between labour rights and human rights is also explicitly acknowledged by the organization as well as the assumption that the two might be hard to conciliate in a coherent discursive strategy: "We didn't have the language, we didn't have the sophistication to debate about working conditions. What we were saying was, 'protection, protection, protection'" (interview member of VVF, Manila, April 2018).

VVF was also very active in promoting the destigmatization of domestic workers in the Philippines. It invented a new Tagalog word– *kasambahay* – to replace traditional expressions such as *katulong* or *alila*, which mean both maid and slave. *Kasambahay* is the compressed form of *kasama sa bahay* – literally 'companion at home' or 'partner in the household'. It is hard to make an informed assessment of how widespread the term has become in the Philippines. In-depth cultural changes will likely take a longer timeframe and different ways of identifying domestic workers will probably coexist for quite some time. Stereotypes engrained in language are often very resilient as it is demonstrated by the fact that derogatory expressions such as 'servant' are still being used even in formal contexts as Congress debates (Congressional Record 2012:9). As I could assess through my interviews, however, the word *kasambahay* has certainly been successfully incorporated in the discourse of social activists, bureaucrats and labour experts.

Although this semantic innovation marked a big step towards a positive cultural transition, '*kasambahay*' does not contain any explicit reference to the realm of work. Indeed, the translation of domestic worker in Tagalog would be *manggagawa sa bahay*.

Yet, for VFF refraining from labour-related language was deliberate and served a political purpose:

We didn't want to create enemies in the very early stages. So, we created a platform where we convinced people that it is a win-win solution to empower and give rights to domestic workers. A *kasambahay* is your partner at home, your companion in the house. It's not 'I am your worker, I need my rights... that kind of negotiation' (interview with VFF officer, cit.).

The fact that the semantic roots of *kasambahay* still remain within the family realm left some activists unsatisfied, especially those with a stronger feminist background. "It's a positive term but, at the same time, it's a tricky term. The significance of the Convention is that domestic workers are workers. And if you are saying that you are somebody who is family, that means you are not a worker" (interview with migrant NGO officer, cit.)

Although the term *kasambahay* was never openly challenged by the labour movement, a discursive shift can be noticed when trade unions became more involved in the fight for domestic workers rights. As a former ILO officer (cit.) recalls, there was a shift "from the issue of abuse to working conditions. NGOs were led to that place of debate that it's not just about human, women, children's rights, that goes beyond the dimension of abuse, but it's structured according to working conditions". In contrast to those frames widely used to lobby both for migrant rights and against child labour, the recent public discussion on domestic workers' rights has been characterized by a focus on working conditions, which tends to be less appealing for consumption by social and traditional media. This discursive shift is symptomatic of a broader transition from human rights to labour rights as well as of the difficulty to reconcile both rights frameworks in one coherent narrative. Different ways of

framing issues around domestic workers recognition also reflect divergent visions and strategies embraced by the labour and human rights actors leading the NOLA in different moments.

### *5.2 NOLA Leadership*

The domestic workers' organization SUMAPI has been described as “a typical non-union MBO [Membership-based Organization] that has played a significant role in formulating the need for a Convention as well as campaigning and organising on an international level” (Johnstone 2012: 34). It was among the organisers of the first international domestic workers summit in 2006 and contributed to the formulation of the Decent Work for Domestic Workers agenda (D'Souza 2010). Given SUMAPI's solid international and domestic reputation, its sudden dismantling around 2013 is indeed puzzling. As my fieldwork reviled, the most obvious explanation connects SUMAPI's collapse with the judicial troubles of its main sponsor, VVF. In 2013, USAID accused VVF of committing fraud by intentionally falsifying and altering documents to hide the misuse of at least \$2 millions granted to support anti-trafficking work. The Philippines Department of Justice cleared VVF of any charges in 2016, but the allegations caused irreparable damages to the organization, which was forced to downsize its operations and adopt a low-key profile. The scandal gave SUMAPI the mortal blow.

Yet even prior to 2013, SUMAPI was not in good health. Contention around the organization had been ongoing in the framework of the TWG from quite some time. Under the ILO leadership and with a strong push from the unions, an agreement was reached among the TWG members that a union-led organization of domestic workers should be prioritised. Initially each union would work to organize domestic

workers that would then converge into a national federation. What to do with SUMAPI, however, remained an open question. The FFW offered to affiliate SUMAPI but the negotiations with VFF “did not push through” (interview with FFW Secretariat member, cit.). According to different sources, resistance mainly came from VFF’s leadership. In the different recollections of this story, the tensions between labour movements and human rights NGOs clearly materialize. On the one hand, Cecilia Oebanda and her team did not oppose the idea of unions organizing domestic workers, but they did feel side-tracked after they had led the battle for over 20 years. Besides the resentment, there is also a perception that the union leadership was undermining the approach taken by VFF, which was grounded on human rights and embraced a broader agenda than only labour standards. As an activist recalls:

The implementation of the Convention will eventually be watched by labour unions because that’s their interest and we didn’t mind really. But we were aware that there was a tendency for a narrow compliance from a purely labour standards [perspective]. When in fact [...] the context in which the movement was born here was just partly [...] labour rights. It was broadly children’s rights, women’s rights, community movements. *It was a social movement* (interview with VFF officer, cit.).

On the other hand, the more critical voices among the union leadership interpreted the resistance of VFF as reluctance to give up power as well as the symptom of some in-depth structural differences between labour and the human rights movements: “VFF was [...] organizing domestic workers as clients more than unions.” (interview with union leader, Manila, March 2018). The heavy reliance of NGOs on external funding was considered a weakness as well as their lack of legitimacy to speak on behalf of the constituencies they were supporting. For example, according to sources familiar with the process, “ECOP was not keen in attending the TWG when

VFF was leading since the NGOs are not part of the tripartite structure. For ECOP it is easier to work with unions” (interview, Manila, March 2018). As another member of the TWG summarized: “Unions are a more sustainable model. NGOs have limitations in organizing domestic workers” (interview, Manila, March 2018).

Yet, in practice, even for unions the task of organizing this sector has not been straightforward. Initiatives have been led on different fronts with mixed results. The most advanced experience is the one led by SENTRO, which, after the dismantling of SUMAPI, has been hosting the only registered domestic workers association in the country: United Domestic Workers of the Philippines (UNITED). Other unions have also launched their own initiatives, albeit all at quite embryonic stages. All these initiatives share similar challenges including limited resources and well-known constraints linked to the isolated nature of domestic work. An additional issue mentioned by many union leaders is the conflict of interest in which they often find themselves, being both employers of domestic workers while trying to organize and represent them. All these issues have been slowing down the process of unionization of this sector in the Philippines.

## **6. Conclusions**

The domestic politics surrounding the ratification of Convention 189 and the implementation of a new legal framework for the recognition of domestic workers rights in the Philippines has much to say about the practical implications of the convergence of human rights and labour rights. Through a process-tracing analysis of the phases preceding and following the ratification, this paper has investigated not only how the convergence has played out in practice, particularly focusing on discursive frames and the NOLA leadership, but also how it has evolved over time. Indeed, the

temporal dimension has generally been overlooked in the literature and yet, I argue, it is crucial to assess a key aspect of this process: its sustainability. On the one hand, the Philippines case provides a compelling example of how the rise of domestic workers rights within the national debate and political agenda has been the result of a successful alliance between human rights and labour rights movements. These findings reinforce some of the theoretical intuitions that have emerged in recent studies on the international arena and confirm the relevance of domestic workers rights as yet another example of the ongoing convergence between human rights and labour rights. On the other hand, looking at the process of legal reform and policy implementation that followed the ratification, these initial convergence starts to blur. This is clear both at the level of discursive frames as well in the NOLA leadership composition.

In terms of frames, the main strategies typically used by human rights actors, including dramatization, personalization and emotional leverage, never managed to completely spill-over into the national debate on domestic work. An attempt was made to destigmatize and change the cultural imaginary surrounding the sector through linguistic innovation with the newly coined term *kasambahay*. The term was successfully adopted by social and political activists, but it did not trigger a broader change in the way the issue was discussed, especially after the labour movements took over the NOLA leadership from human rights NGOs. This case is indeed a good example of the different ways the two movements construct their public discourse and portrait their vision for social change (Kolben 2010; Seidman 2007; Brooks 2007). On the one hand, human rights organizations, particularly those with a background in child labour and migration, tend to look out for victims and heroes to support a narrative of redemption. On the other hand, labour unions tend to focus on the collective dimension and agency of the working class and the language adopted tend to be rather technical

and dry. These differences are particularly evident in the stark contrast between migrant domestic workers issues (mainly relying on human rights frames) and national domestic workers issues (mainly relying on labour rights frames).

The challenges of a sustainable convergence between human rights and labour rights emerge even strongly looking at how the alliance between human rights and labour rights movements evolved in the post-ratification phase. Indeed, the convergence in practice was rather a leadership transition from human rights NGOs to labour unions, and not a smooth one. The way the transition was managed left both parties unsatisfied and, more importantly, left ‘casualties’ on the ground, such as SUMAPI. This story exemplifies the tensions in priorities, *modus operandi* and vision of human rights and labour movements that contribute to explain why a sustainable convergence might prove difficult in the long run. On the one hand, unions enjoy greater legitimacy and entitlement when it comes to workers issues, but, at the same time, they face multiple challenges linked to a structural lack of resources and the progressive weakening of their political relevance. In the case of domestic workers, the conflict of interests experienced by unions leaders for being both employers and advocates for this sector definitely deserves closer attention. On the other hand, human rights NGOs have become powerful actors and very effective not only in the work of protection and counselling of vulnerable groups, but in steering the political agenda. Their goals (and reputation), however, are rather volatile and tied to donors’ changing priorities. At the same time, their legitimacy when it comes to labour issues and representing workers ‘as workers’ is weak and can be easily challenged, potentially compromising their achievements and good intentions. Moreover, NGOs are also confronted with the potentially conflicting interests of migrant domestic workers and national domestic workers. Indeed, migrant domestic workers are particularly



vulnerable while overseas but, once they return, they enjoy social respect and relatively good economic conditions, which often allow them to be themselves employers of domestic workers. On the contrary, national domestic workers do not go through the process of redemption that comes with migration, remaining one of the most stigmatized groups of workers in the country. This tension can explain why the alliance between migrant rights NGOs and labour unions has been rather weak and progressively faded over time.

In sum, this article argues that a convergence between human rights and labour rights (and movements) is evident in the fight for domestic workers rights in the Philippines. Yet, this convergence has not undertaken a linear trajectory but can rather be visualized as a U shape, with the point of inflection located around the ratification of Convention 189 and divergence prevailing in the post-ratification phase. These findings call for greater attention and empirical evidence on how the convergence postulated in theory and documented at the international level unfolds over time – in other words on its sustainability. An empirical approach could also contribute to shed light on the theoretical arguments around the permeability and expansion of international human rights law particularly with respect to labour rights and social justice.

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## References

- Albin, Einat, and Virginia Mantouvalou (2012) 'The ILO convention on domestic workers: From the shadows to the light.' *Industrial Law Journal* 41(1): 67-78.
- Becker, J. (2012). *Campaigning for justice: Human rights advocacy in practice*. Palo Alto, CA: Stanford University Press.
- Blackett, Adelle (2012) 'The Decent Work for Domestic Workers Convention and Recommendation, 2011.' *The American Journal of International Law* 106(4): 778-794.
- Bonner, Christine, and David Spooner (2011) 'Organizing Labour in the Informal Economy.' *Labour, Capital and Society* 44 (1): 127–152.
- Boris, Eileen, and Jennifer N. Fish (2014) 'Domestic Workers Go Global: The Birth of the International Domestic Workers Federation'. *New Labor Forum*, 23(3): 76-81.
- Brooks, Ethel C. (2007) *Unraveling the garment industry: Transnational organizing and women's work*. Minneapolis: University of Minnesota Press.
- Chavez, Joy Jenina and Nicola Piper (2015) 'The reluctant leader: The Philippine journey from Labour Export to Championing a Right-based Approach to Overseas Employment'. In *Asian Leadership in Policy Governance*: 305-344.
- Congressional Record (2012) '15<sup>th</sup> Congress Second Regular Session. House of Representatives of the Philippines'. 3(49), 8 May.
- D'Souza, Asha (2010) 'Moving towards decent work for domestic workers – an overview of the ILO's work'. *Working paper 2/2010*, Geneva: International Labour Office.
- Elias, Juanita (2010) 'Making migrant domestic work visible: The rights based approach to migration and the 'challenges of social reproduction'.' *Review of International Political Economy* 17(5): 840-859.
- Filipino Times (2015) 'Ph deploys close to 6,000 OFWs a day – DOLE.' <https://filipinotimes.net/editors-pick/2017/10/26/ph-deploys-close-6000-ofws-day-dole/> Accessed 11 January 2019.

- Fish, Jennifer N. (2017) *Domestic Workers of the World Unite!: A Global Movement for Dignity and Human Rights*. New York: NYU Press.
- Grugel, Jean and Nicola Piper (2011) 'Global governance, economic migration and the difficulties of social activism.' *International Sociology* 26(4): 435-454.
- Gutierrez, Jason (2018) 'Philippine President Says He Sexually Abused Housemaid as a Teenager.' *New York Times*, 31 December.
- Hertel, Shareen (2009) 'Human rights and the global economy: bringing labor rights back in'. *Maryland Journal of International Law* 24(1): 240-252.
- ILO (2013) *Domestic workers across the world: Global and regional statistics and the extent of legal protection*. Geneva: ILO  
[https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms\\_173363.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_173363.pdf) Accessed 5 November 2018.
- ILO (2015) *ILO Global estimates of migrant workers and migrant domestic workers: results and methodology*. Geneva: ILO [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms\\_436343.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_436343.pdf) Accessed 10 January 2019
- Johnstone, Leah (2012) *Organising domestic workers: for decent work and the ILO Convention No. 189*. MS thesis. Oslo and Akershus University College of Applied Sciences.
- King-Dejardin, Amelita (2018) 'The Philippines: Contribution of Social Dialogue to the Formalisation of Domestic work and Agenda 2030'. Draft. TUDCN/ITUC [www.ituc-csi.org/social-dialogue-informality](http://www.ituc-csi.org/social-dialogue-informality) Accessed 11 January 2019.
- Kolben, Kevin (2009) 'Labor rights as human rights.' *Virginia Journal of International Law* 50(2): 449-484.
- Kumar, Vidya (2015) 'Rethinking the Convergence of Human Rights and Labour Rights in International Law: Depoliticisation and Excess'. In *Osgoode Hall Reader: Law In Transition*. Oxford: Hart, 127-140.
- Leary, Virginia A. (1996) 'The Paradox of Workers' Rights as Human Rights'. In Compa, Lance A. and Stephen F. Diamond (eds.) *Human Rights, Labor Rights, and International Trade*. Philadelphia: University of Pennsylvania Press, 22-47.
- Lindio-McGovern, Ligaya (2013) *Globalization, labor export and resistance: A study of Filipino migrant domestic workers in global cities*. London: Routledge.
- Mantouvalou, Virginia (2012) 'Are labour rights human rights?.' *European labour law journal* 3(2): 151-172.
- Mantouvalou, Virginia (2013) 'Workers without Rights as Citizens at the Margins.' *Critical Review of International Social and Political Philosophy* 16(3): 366-38
- Medenilla, Samuel (2017) 'Number of Filipino household service workers abroad reaches 2.2M', *Manila Bulletin*, 17 December,

<https://news.mb.com.ph/2017/12/17/number-of-filipino-household-service-workers-abroad-reaches-2-2m/> Accessed 11 January 2019.

Mundlak, Guy (2012) 'Human Rights and Labor Rights: Why Don't the Two Tracks Meet.' *Comparative Labor Law & Policy Journal* 34(1): 217-246.

Oelz, Martin (2014) 'The ILO's Domestic Workers Convention and Recommendation: A window of opportunity for social justice.' *International Labour Review* 153(1): 143-172.

Parreñas, Rhacel Salazar (2008) *The force of domesticity: Filipina migrants and globalization*. New York: NYU Press.

Piper, Nicola (2005) 'Rights of foreign domestic workers—emergence of transnational and transregional solidarity?' *Asian and Pacific Migration Journal* 14(1-2): 97-119.

Piper, Nicola & Stefan Rother (2012) 'Let's Argue about Migration: advancing a right(s) discourse via communicative opportunities'. *Third World Quarterly* 33(9): 1735-1750

Piper, Nicola (2015) Democratising Migration from the Bottom Up: The Rise of the Global Migrant Rights Movement, *Globalizations*, 12:5, 788-802

Pla-Julián, Isabel (2014) 'Addressing informality, gender and ethnicity in domestic labour: lessons from recent Spanish legislation.' *Transfer: European Review of Labour and Research* 20(4): 559-575.

Rother, Stefan (2017) 'Indonesian migrant domestic workers in transnational political spaces: Agency, gender roles and social class formation.' *Journal of Ethnic and Migration Studies* 43(6): 956-973.

Seidman, Gay W. (2007) *Beyond the boycott: Labor rights, human rights, and transnational activism*. Russell Sage Foundation.

Shirzad, Morteza and Sedighe Soltani (2015) 'Should a Human Right Discourse be Applied to Labour Standards?' *European Journal of Social Sciences Education and Research* 2(3): 75-80.

Tasioulas, John (2012) 'On the nature of human rights'. In: G. Ernst and J. Heilinger, (eds.) *The philosophy of human rights*. Berlin: de Gruyter, 17-60

Youngdahl, Jay (2009) 'Solidarity First: Labor Rights Are Not the Same as Human Rights.' *New Labor Forum* 18(1): 31-37.

Zajak, Sabrina, Niklas Egels-Zandén, and Nicola Piper (2017) 'Networks of labour activism: Collective action across Asia and beyond. An introduction to the debate.' *Development and Change* 48(5): 899-921.